

**REMARKS**

Applicants wish to thank the Examiner for reviewing the present patent application. It is also acknowledged that the current Office Action is now non-final and this Office Action has been mailed subsequent to the Applicants' filing of a brief.

All amendments are supported by the specification as originally filed, and therefore, comply with 35 USC §132.

I. Rejection Under 35 U.S.C. §102(b)

The Examiner has rejected claims 1-12 under 35 USC §102(b) as being anticipated by Wong et al., U.S. Patent No. 5,693,357 (hereinafter 357). In the rejection, the Examiner mentions, in summary, that the '357 reference discloses a nut butter containing nut ingredients, seasonings, stabilizer, emulsifier and bulking agents within the claimed amounts. The Examiner further mentions and believes that the '357 reference discloses the particle size distribution of the presently claimed compositions. In view of this, the Examiner believes that the novelty rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, the present invention is directed to a superior nut butter made in a form which is very spreadable and that takes less force to spread with a

knife. Independent claim 1 describes a nut butter or nut spread composition comprising (a) a nut ingredient, (b) from about 0 to about 10% seasonings, (c) from about 0.5 to 2.5% stabilizer, (d) from about 0 to 1% emulsifier and (e) from about 0 to 60% bulking agent, whereby the particle size distribution of the nut butter or nut spread composition has a lower percentage of fine and coarse size particles and a higher percentage of medium size particles such that at least 90% of the particles are smaller than about 40 microns, at least 50% of the particles are smaller than about 3 microns and 1.4% of the particles are larger than 58.7 microns wherein the composition has a spreadability of about 4 kilograms to about 5.3 kilograms.

The invention of claim 1 is further defined by the dependent claims which claim, among other things, specific viscosities, the type of nut ingredient, the addition of oil, and a spreadability from about 4.915 kilograms to about 5.215 kilograms. Independent claim 1 is still further defined by newly added claims 13 and 14 which set forth that at least 10% of the particles are smaller than about 2 microns and that the composition is a once ground composition.

Independent claim 7 is directed to a reduced fat nut spread comprising (a) a nut ingredient, (b) from about 0-10% seasonings, (c) from about 0.3 to 2.5% stabilizer, (d) from about 0 to 1% emulsifier and (e) from about 0 to 60% bulking agent wherein the particle size distribution of the nut spread composition has a lower percentage of fine and coarse size particles and a higher percentage of medium size particles such that at least 90% of the particles are smaller than about 40 microns, at least 50% of the particles are smaller than about 10 microns, at least 10% are smaller than about 3 microns and 1.4% of the particles are larger than 58.7 microns, the composition having a spreadability of about 4 kilograms to about 5.3 kilograms.

The invention of claim 7 is further defined by the dependent claims which claim, among other things, specific viscosities, the type of nut ingredient, the addition of oil and a spreadability from about 4.915 kilograms to about 5.215 kilograms. Still further, claim 7 is further defined by newly added claims 15 and 16 which set forth that at least 10% of the particles present are smaller than about 2 microns and that the composition is a once ground composition.

In contrast, and as already made of record, the '357 reference merely discloses a nut paste having a particular monomodal particle size distribution. The monomodal nut butters and spreads of the '357 reference typically comprise from about 50% to 100% of a nut paste with water insoluble solids comprising a particle size of less than about 21.6 microns. The '357 reference does not, even remotely, teach, suggest or describe any of the important and critical limitations set forth in independent claims 1 and 7. Particularly, there is no teaching whatsoever in the '357 reference that even remotely suggests the spreadability of the presently claimed compositions. Moreover, nothing in the '357 reference even remotely suggests the particle size distribution set forth in independent claims 1 and 7.

It is clear that all of the important and critical limitations set forth in the presently claimed invention are not found in a single prior art reference, namely the '357 reference. In view of this, it is respectfully requested that the novelty rejection be withdrawn and rendered moot.

## II. Rejection Under 35 USC §103

The Examiner has rejected claims 1, 3, 4, 5, 9-11 and 12 under 35 USC §103 as being unpatentable over Wong et al., U.S. Patent No. 5,693,357 (hereinafter '357) in view of Wong et al., U.S. Patent No. 5,885,645 (hereinafter '645). In the rejection, the Examiner mentions, in summary, that the '357 reference discloses a nut butter containing nut ingredients, seasonings, stabilizer, emulsifier and bulking agents with a particle size distribution consistent to that of the claimed invention. The Examiner further mentions that claims 1 and 12 differ from the '357 reference with respect to the description of the larger particles and spreadability. Nevertheless, in order to cure the vast deficiencies of the '357 reference, the Examiner relies on the '645 reference for allegedly showing that chunky-type peanut butter is made with larger peanut granules. In view of this, the Examiner believes that the obviousness rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above described for at least the following reasons.

In contrast, and as already made of record, the '357 reference merely discloses a nut paste having a particular monomodal particle size distribution. The monomodal nut butters and spreads of the '357 reference typically comprise from about 50% to 100% of a nut paste with water insoluble solids comprising a particle size of less than about 21.6 microns. For the reasons stated above, none of the important and critical limitations set forth in the presently claimed invention are even remotely found in the '357 reference.

The deficiencies in the '357 reference are not cured by the '645 reference since the same merely discloses separately milled nut solids and particular water soluble solids used to reduce stickiness and improve flavor intensity of a nut spread. Nothing in the '645 reference even remotely describes any of the limitations set forth in the presently claimed invention. It should also be noted that claims 9-11 and 12 depend from claim 7. Since claim 7 cannot be rejected under 35 USC §103 with respect to the applied references, those claims which are dependent from claim 7 cannot be properly rejected under the combination of references relied on by the Examiner, namely the '357 reference and the '645 reference.

Since all the important and critical limitations set forth in the presently claimed invention are not found in the combination of references relied on by the Examiner, it is respectfully requested that the obviousness rejection be withdrawn and rendered moot.

### III. Rejection Under 35 USC §103

The Examiner has rejected claims 2, 6, 7 and 8 under 35 USC §103 as being unpatentable over Wong et al., U.S. Patent No. 5,693,357 (hereinafter '357) in view of Wong, U.S. Patent No. 5,885,645 (hereinafter '645) and further in view of Meade, U.S. Patent No. 6,010,737 (hereinafter '737). In the rejection, the Examiner mentions, in summary, that the '737 reference discloses viscosities within the claimed range and it would be obvious to use/want a viscosity as disclosed by the '737 reference in the compositions described in the '357 reference. Furthermore, the Examiner believes it's obvious to vary particle sizes to obtain a particular spreadability. In view of this, the Examiner believes that the obviousness rejection is warranted.

Notwithstanding the Examiner's apparent position to the contrary, it is the Applicants' position that the presently claimed invention is patentably distinguishable from the above-described for at least the following reasons.

As already made of record, none of the important and critical limitations set forth in the presently claimed invention, for example as they apply to particle size distribution, are even remotely described in the '357 and '645 reference. Furthermore, the '737 reference merely describes nut spreads having reduced fat and reduced calories. The nut spreads of the '737 reference have from about 4 to about 18% of a low or no calorie triacylglycerol oil. None of the important and critical limitations set forth in the presently claimed invention are even remotely found in the '737 reference.

Furthermore, the combination of references relied on by the Examiner do not suggest that at least 10% of the particles present within the composition are smaller than about 2 microns and do not suggest that the composition is one which is a once ground composition. In view of the above, all of the important and critical limitations set forth in the presently claimed invention are not found in the combination of references relied on by the Examiner. Applicants, therefore, respectfully request that the obviousness rejection be withdrawn and rendered moot.

Applicants submit that all claims of record are now in condition for allowance. Reconsideration and favorable action are earnestly solicited.

In the event the Examiner has any questions or concerns regarding the present patent application, she is kindly invited to contact the undersigned counsel at her earliest convenience.

Respectfully submitted,



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